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Class*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIN ROBERTSON, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

FREERATEUPDATE.COM CORP.,

Defendant.

Case No.

Class Action

JURY TRIAL DEMAND

Plaintiff Erin Robertson by her undersigned counsel, for this class action complaint against Defendant Freerateupdate.com Corp. (“Freerateupdate”) and their present, former and future direct and indirect parent companies, subsidiaries, affiliates, agents and related entities, allege as follows:

I. INTRODUCTION

1. Nature of Action: “Telemarketing calls are intrusive. A great many people object to these calls, which interfere with their lives, tie up their phone

1 lines, and cause confusion and disruption on phone records. Faced with growing
2 public criticism of abusive telephone marketing practices, Congress enacted
3 the Telephone Consumer Protection Act of 1991. Pub. L. No. 102-243, 105 Stat.
4 2394 (1991) (codified at 47 U.S.C. § 227). As Congress explained, the law was a
5 response to Americans ‘outraged over the proliferation of intrusive, nuisance calls
6 to their homes from telemarketers’ *id.* § 2(6), and sought to strike a balance
7 between ‘[i]ndividuals’ privacy rights, public safety interests, and commercial
8 freedoms’ *id.* § 2(9).

12 2. “The law opted for a consumer-driven process that would allow
13 objecting individuals to prevent unwanted calls to their homes. The result of the
14 telemarketing regulations was the national Do-Not-Call registry. *See* 47 C.F.R. §
15 64.1200(c)(2). Within the federal government’s web of indecipherable acronyms
16 and byzantine programs, the Do-Not-Call registry stands out as a model of clarity.
17 It means what it says. If a person wishes to no longer receive telephone
18 solicitations, he can add his number to the list. The TCPA then restricts the
19 telephone solicitations that can be made to that number. *See id.*; 16 C.F.R. §
20 310.4(b)(iii)(B) (‘It is an abusive telemarketing act or practice and a violation of
21 this Rule for a telemarketer to . . . initiat[e] any outbound telephone call to a person
22 when . . . [t]hat person’s telephone number is on the “do-not-call” registry,
23 maintained by the Commission.’)...Private suits can seek either monetary or
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1 injunctive relief. *Id.*... This private cause of action is a straightforward provision
2 designed to achieve a straightforward result. Congress enacted the law to protect
3 against invasions of privacy that were harming people. The law empowers each
4 person to protect his own personal rights. Violations of the law are clear, as is the
5 remedy. Put simply, the TCPA affords relief to those persons who, despite efforts
6 to avoid it, have suffered an intrusion upon their domestic peace.” *Krakauer v.*
7
8 *Dish Network, L.L.C.*, 925 F.3d 643, 649-50 (4th Cir. 2019).

9
10 3. Plaintiff, individually and as class representative for all others
11 similarly situated, brings this action against Freerateupdate.com Corp for violations
12 of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) for making
13 telemarketing calls to numbers on the National Do Not Call Registry, including
14 their own.
15
16

17 4. Because telemarketing campaigns generally place calls to thousands
18 or even millions of potential customers *en masse*, Plaintiff brings this action on
19 behalf of a proposed nationwide class of other persons who received illegal
20 telemarketing calls from or on behalf of Defendant.
21
22

23 II. PARTIES

24 5. Plaintiff is an individual.

25 6. Defendant Freerateupdate.com Corp is a corporation with its principal
26 place of business located in this District.
27
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III. JURISDICTION AND VENUE

7. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012).

8. Personal Jurisdiction: This Court has personal jurisdiction over Defendant because they are located in this District.

9. Venue: Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)-(2) because a substantial part of the events giving rise to Plaintiff's claims—namely, the illegal telemarketing at issue—occurred from this District.

IV. FACTS

A. The Enactment of the TCPA and its Regulations

10. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

11. § 227(c) of the TCPA requires the FCC to “initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” 47 U.S.C. § 227(c)(1).

12. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

1 13. A listing on the Registry “must be honored indefinitely, or until the
2 registration is cancelled by the consumer or the telephone number is removed by
3 the database administrator.” *Id.*
4

5 14. The TCPA and implementing regulations prohibit the initiation of
6 telephone solicitations to residential telephone subscribers to the Registry and
7 provides a private right of action against any entity that makes those calls, or “on
8 whose behalf” such calls are made. 47 U.S.C. § 227(c)(5); 47 C.F.R.
9 § 64.1200(c)(2).
10
11

12 **B. Defendant’s Unsolicited Telemarketing to Plaintiff**
13

14 15. Plaintiff is, and at all times mentioned herein was, a “person” as
15 defined by 47 U.S.C. § 153(39).
16

17 16. Plaintiff’s telephone number, (XXX) XXX-4337, is a non-commercial
18 telephone number not associated with any business.

19 17. Plaintiff’s telephone number, (XXX) XXX-4337, is used for personal
20 residential purposes only.
21

22 18. Plaintiff’s telephone number has been listed on the National Do Not
23 Call Registry since 2023.
24

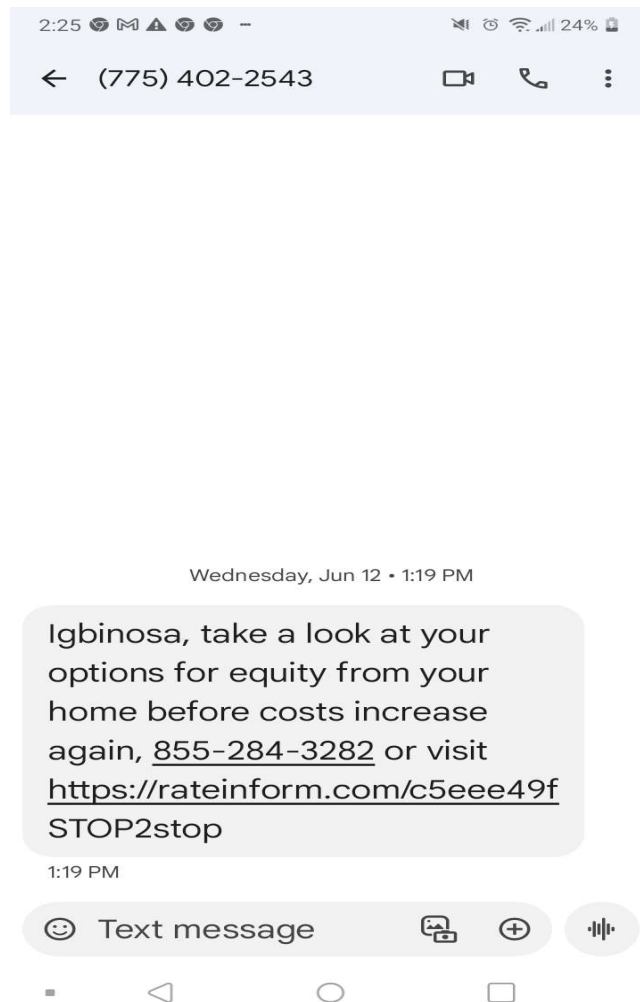
25 19. The number is a residential telephone line because it is assigned to a
26 telephone exchange service for consumers and is not assigned to a telephone
27 exchange service for businesses.
28

1 20. Plaintiff never consented to receive calls from Freerateupdate.

2 21. Plaintiff never did business with Freerateupdate.

3 22. Despite that, Ms. Robertson received at least one text and one
4 telemarketing call from the Defendant.
5

6 23. The text was sent on June 12, 2024:
7



25 24. When the website in the text message is clicked, it redirects to
26 freerateupdate.com.
27

28 25. The Plaintiff is not Igbinosa and has no affiliation with that individual.

1 33. Excluded from the Class are counsel, Defendant, any entities in
2 which Defendant has a controlling interest, Defendant's agents and employees, any
3 judge to whom this action is assigned, and any member of such judge's staff and
4 immediate family.
5

6 34. The Class, as defined above, is identifiable through telephone records
7 and telephone number databases.
8

9 35. The potential members of the Class likely number at least in the
10 hundreds because of the *en masse* nature of telemarketing calls.
11

12 36. Individual joinder of these persons is impracticable.
13

14 37. Additionally, the disposition of the claims in a class action will
15 provide substantial benefit to the parties and the Court in avoiding a multiplicity of
16 identical suits.
17

18 38. Plaintiff is a member of the Class and will fairly and adequately
19 represent and protect the interests of the Class as she has no interests that conflict
20 with any of the class members.
21

22 39. Plaintiff and all members of the Class have been harmed by the acts of
23 Defendant, including, but not limited to, the invasion of their privacy, annoyance,
24 waste of time, and the intrusion on their telephone that occupied it from receiving
25 legitimate communications.
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1 40. This class action complaint seeks injunctive relief and money
2 damages.

3 41. There are numerous questions of law and fact common to Plaintiff and
4 members of the Class. These common questions of law and fact include, but are
5 not limited to, the following:
6

7 a. whether Defendant systematically made multiple telephone
8 calls to members of the National Do Not Call Registry Class;
9

10 b. whether Defendant made calls to Plaintiff and members of the
11 National Do Not Call Registry Class without first obtaining prior express written
12 consent to make the calls; and
13

14 c. whether members of the Class are entitled to treble damages
15 based on the willfulness of Defendant's conduct.
16

17 42. Plaintiff's claims are typical of the claims of the Class.
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19 43. Plaintiff's claims, like the claims of Class, arise out of the same
20 common course of conduct by Defendant and are based on the same legal and
21 remedial theories.
22

23 44. Plaintiff is an adequate representative of the Class because her
24 interests do not conflict with the interests of the Class, she will fairly and
25 adequately protect the interests of the Class, and she is represented by counsel
26 skilled and experienced in class actions, including TCPA class actions.
27
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1 45. Common questions of law and fact predominate over questions
2 affecting only individual class members, and a class action is the superior method
3 for fair and efficient adjudication of the controversy. The only individual question
4 concerns identification of class members, which will be ascertainable from records
5 maintained by Defendant and/or its agents.
6

7 46. A class action is the superior method for the fair and efficient
8 adjudication of this controversy. Class-wide relief is essential to compel Defendant
9 to comply with the TCPA. The interests of individual members of the Class in
10 individually controlling the prosecution of separate claims against Defendant are
11 small because the damages in an individual action for violation of the TCPA are
12 small. Management of these claims is likely to present significantly more
13 difficulties than are presented in many class claims. Class treatment is superior to
14 multiple individual suits or piecemeal litigation because it conserves judicial
15 resources, promotes consistency and efficiency of adjudication, provides a forum
16 for small claimants, and deters illegal activities. There will be no significant
17 difficulty in the management of this case as a class action.
18

19 47. Defendant has acted on grounds generally applicable to the Class,
20 thereby making final injunctive relief and corresponding declaratory relief with
21 respect to the Class appropriate on a class-wide basis. Moreover, on information
22 and belief, Plaintiff alleges that the telephone solicitation calls made by Defendant
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1 and/or its affiliates, agents, and/or other persons or entities acting on Defendant's
2 behalf that are complained of herein are substantially likely to continue in the
3 future if an injunction is not entered.
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5
6 **FIRST CAUSE OF ACTION**
7 **Telephone Consumer Protection Act**
8 **Violations of 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)**
9 **(On Behalf of Plaintiff and the National Do Not Call Registry Class)**

10 48. Plaintiff repeats the prior allegations of this Complaint and
11 incorporates them by reference herein.

12 49. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple violations of the TCPA, 47 U.S.C. § 227, by making telemarketing
14 calls, except for emergency purposes, to Plaintiff and members of the National Do
15 Not Call Registry Class despite their numbers being on the National Do Not Call
16 Registry.
17

18 50. Defendant's violations were negligent, willful, or knowing.
19

20 51. As a result of Defendant's violations of the TCPA, 47 U.S.C. § 227,
21 Plaintiff and members of the National Do Not Call Registry Class are
22 presumptively entitled to an award of between \$500 and \$1,500 in damages for
23 each call made.
24

25 52. Plaintiff and the members of the National Do Not Call Registry Class
26 are also entitled to and do seek injunctive relief prohibiting Defendant and/or its
27
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1 affiliates, agents, and/or other persons or entities acting on Defendant's behalf
2 from making telemarketing calls to telephone numbers registered on the National
3 Do Not Call Registry, except for emergency purposes, in the future.
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5
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
8 the following relief:

- 9 A. Certification of the proposed Class;
10
11 B. Appointment of Plaintiff as representative of the Class;
12
13 C. Appointment of the undersigned counsel as counsel for the Class;
14
15 D. A declaration that Defendant and/or its affiliates, agents, and/or other
16 related entities' actions complained of herein violated the TCPA;
17
18 E. An order enjoining Defendant and/or its affiliates, agents, and/or other
19 persons or entities acting on Defendant's behalf from making telemarketing calls to
20 numbers on the National Do Not Call Registry, absent an emergency circumstance;
21
22 F. An award to Plaintiff and the Class of damages, as allowed by law;
23 and
24
25 G. Orders granting such other and further relief as the Court deems
26 necessary, just, and proper.
27

28 **VI. DEMAND FOR JURY**

Plaintiff demands a trial by jury for all issues so triable.

1 Dated: August 12, 2024 PLAINTIFF, individually and on behalf of all
2 others similarly situated,

3 By: /s/ Rachel E. Kaufman

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